

OCT 27 2006

**FEDERAL ELECTION COMMISSION**

**999 E Street, N.W.**

**Washington, D.C. 20463**

2005 OCT 27 P 12: 22

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

**MUR: 5682**

**DATE COMPLAINT FILED: October 19, 2005**

**DATE OF NOTIFICATION: October 25, 2005**

**LAST RESPONSE RECEIVED: November 22, 2005**

**DATE ACTIVATED: August 15, 2006**

**EXPIRATION OF SOL: September 12, 2010**

**COMPLAINANT(S):** Karl Bremer

**RESPONDENT(S):** Bachmann for Congress  
Joe Droogsma, in his official capacity as treasurer  
Renee T. Doyle  
EdWatch, Inc.

**RELEVANT STATUTE(S):** 2 U.S.C. § 441b  
2 U.S.C. § 434(b)(5)(A)  
11 C.F.R. § 100.52(d)(1)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** Internal Revenue Service

**I. INTRODUCTION**

The complainant, Karl Bremer, filed a complaint alleging that EdWatch, Inc., a nonprofit corporation made, and Bachmann for Congress and Joe Droogsma, in his official capacity as treasurer, (the "Committee") knowingly received, a prohibited corporate contribution by providing a mailing list to the Committee and that EdWatch and its president, Renee T. Doyle, (collectively, the "Nonprofit") endorsed Bachmann for Congress in a letter in violation of the Internal Revenue Code. The Committee is the principal campaign committee of Michele

1 Bachmann, the Republican candidate for the 6th District in Minnesota. As more fully set forth  
2 below, we recommend that the Commission find no reason to believe EdWatch, Inc., Renee T.  
3 Doyle, Bachmann for Congress, and Joe Droogsma, in his official capacity as treasurer, violated  
4 2 U.S.C. § 441b by making or receiving prohibited corporate contributions. We make no  
5 recommendation regarding the allegation that EdWatch and Ms. Doyle violated the Internal  
6 Revenue Code, as this allegation falls outside the scope of the Federal Election Campaign Act of  
7 1971, as amended (the "Act").

## 8 II. FACTUAL BACKGROUND

9 The Committee mailed a solicitation letter signed by Ms. Doyle on or around September  
10 12, 2005. In the two page letter, Ms. Doyle praises Ms. Bachmann and solicits contributions to  
11 her campaign. The first page contains the letterhead and watermark of Ms. Doyle. The first page  
12 footer contains the address, phone number, website, and email address of EdWatch.<sup>1</sup> The second  
13 page contains no header, and the footer contains only the Committee's partial address (the box  
14 number and zip code are missing) and a disclaimer that the solicitation was "Prepared and paid  
15 for by Bachmann for Congress Committee."

16 The second paragraph introduces Ms. Doyle and explains what EdWatch does. The next  
17 several paragraphs state how Ms. Doyle and Ms. Bachmann became acquainted through  
18 EdWatch. The remainder of the letter consists of endorsements for Ms. Bachmann and, finally, a  
19 solicitation for contributions for her Federal campaign. The signature block contains  
20 Ms. Doyle's name and position as president of EdWatch.

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<sup>1</sup> Ms. Doyle founded EdWatch as the Maple River Education Coalition in 1998 and currently serves as its president. Its mission is to educate the public about its perception of the dangers of a centrally planned and controlled federal education system. EdWatch is an all-volunteer organization that is incorporated under the laws of Minnesota and organized under Section 501(c)(3) of the Internal Revenue Code.

1 The responses of both the Nonprofit and the Committee state that Ms. Doyle acted in her  
2 personal capacity, that the information about EdWatch was included solely to “establish [her]  
3 own background, experience and commitment,” and that the Committee paid for all costs  
4 associated with the letter.

5 **III. FACTUAL AND LEGAL ANALYSIS**

6 **A. ENDORSEMENT**

7 The complainant alleges that the letter sent by the Bachmann for Congress campaign on  
8 September 12, 2005, “appears to be an endorsement of a congressional candidate by EdWatch.”  
9 It further alleges that, “[as] a tax-exempt nonprofit 501C3, organization, EdWatch is prohibited  
10 from engaging in partisan political fundraising and endorsements.” Although the complainant  
11 alleges a violation of the Internal Revenue Code, which is outside the scope of the Act, EdWatch  
12 is incorporated and, therefore, subject to the Act’s prohibition on corporate contributions.

13 The Commission has previously concluded that the use of individual endorsers who are  
14 identified by their corporate positions in campaign-funded advertisements does not violate  
15 2 U.S.C. § 441b, provided that the corporate employee volunteers his or her time and the  
16 campaign pays for all communication expenses. *See* MUR 5578 (Wetterling for Congress); *see*  
17 *also* Advisory Opinions 1978-77 (Aspin) and 1984-43 (Brunswick Corporation) (both permitting  
18 individuals to appear in campaign commercials that identify them as corporate employees,  
19 provided commercials were wholly paid for by campaigns and individuals volunteered their  
20 time).

21 It does not appear that EdWatch gave anything of value to the Committee, such that it  
22 would have made a prohibited contribution. Although the letter refers to EdWatch in two  
23 different places, and much of the first page introduces Ms. Bachmann by way of her work on

1 EdWatch's mission to oppose a federalized educational curriculum, the letter appears to be an  
2 endorsement from an individual. The portion of the letter discussing EdWatch appears to be for  
3 context, explaining Ms. Doyle's background, how she came to know Ms. Bachmann, and why  
4 she is supporting Ms. Bachmann, and all of the exhortations to action seem to come from Ms.  
5 Doyle. In addition, although the signature block identifies Ms. Doyle by her corporate title at  
6 EdWatch, the Commission has found that identification as a corporate officer is insufficient to  
7 convert an individual endorsement to a corporate endorsement. *See* MUR 5578 (Wetterling); AO  
8 1978-77 (Aspin); AO 1984-43 (Brunswick Corporation).

9 Further, the complaint neither alleges nor offers any information suggesting that EdWatch  
10 (or anyone other than the Committee) paid for the production and postage costs of the letter, and  
11 the Committee states that "the campaign paid for the entire mailing – envelopes, postage, and all  
12 other costs associated with it." Finally, the letter does not feature EdWatch's corporate logo or  
13 trademark. *See* MUR 5578 (Wetterling) ("use of a corporate trademark in a campaign  
14 advertisement may constitute a violation of § 441b(a)") (citing MUR 4340 (Tweezerman, a/k/a  
15 LaMagna for Congress)).

16 Accordingly, we recommend that the Commission find no reason to believe that  
17 EdWatch, Inc., Renee T. Doyle, Bachmann for Congress, and Joe Droogsma, in his official  
18 capacity as treasurer, violated 2 U.S.C. § 441b by making or receiving prohibited corporate  
19 contributions related to the endorsement.

20 **B. MAILING LIST**

21 The complainant also states that he "suspect[s] the mailing list used for [the letter] came  
22 from EdWatch . . . . If EdWatch did, in fact, provide the Bachmann for Congress campaign with

1 its mailing list or mailing labels, that would appear to be [a] violation of federal election laws.”

2 In its response, the Committee confirms that it received a list from EdWatch, but claims that it  
3 paid EdWatch \$50 for the list.

4 The Committee attached to its response a copy of a cancelled check for \$50 made out to  
5 EdWatch on August 1, 2005, and a bank record showing payment on the check on August 4,  
6 2005. Because the expenditure was less than \$200, the Committee was not required to itemize it.  
7 2 U.S.C. § 434(b)(5)(A). The Committee also attached a printout from an internal accounting  
8 system that indicates the disbursement was for a mailing list. Although the true value of the list  
9 is unknown, there is no information available in the complaint suggesting that \$50 was “less than  
10 the usual and normal charge” such that it would constitute a contribution. 11 C.F.R.

11 § 100.52(d)(1). Further, both the Committee and EdWatch assert that the mailing list contained a  
12 total of 600 names, and the Committee’s response, although not sworn to, states that its attorney  
13 “consulted with a reputable list broker regarding valuation of such a list, and confirmed that the  
14 campaign did in fact pay to EdWatch the proper fair market value.”<sup>2</sup> Our own research suggests  
15 that \$50 may not be an unreasonable valuation.<sup>3</sup>

16 On balance, because the allegation is not supported by any information indicating the  
17 Committee did not pay the normal and usual charge for the list and the Committee provides  
18 sufficient evidence refuting the allegation, we recommend that the Commission find no reason to

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<sup>2</sup> Although both responses note that only a 40-50 of the names on the list were for people residing in Ms. Bachmann’s district, this is a red herring, because the letter at issue was a solicitation letter, and everyone on the list was a potential contributor.

<sup>3</sup> See, e.g., <http://www.directmailconnection.com/list/consumer.shtml> (charging \$.05 per name for consumer records); [http://www.buyerzone.com/marketing/mailling\\_lists/buyers\\_guide5.html](http://www.buyerzone.com/marketing/mailling_lists/buyers_guide5.html) (charging \$.10 per name for consumer records); [http://smallbusiness.yahoo.com/r-article-a-40945-m-6-sc-43-mailling\\_list\\_brokers\\_buyers\\_guide-i?aid=40945&mcid=6&scid=43&mailling\\_list\\_brokers\\_buyers\\_guide=1](http://smallbusiness.yahoo.com/r-article-a-40945-m-6-sc-43-mailling_list_brokers_buyers_guide-i?aid=40945&mcid=6&scid=43&mailling_list_brokers_buyers_guide=1) (average of \$.10 per name for consumer records).

believe that EdWatch, Inc., Renee T. Doyle, Bachmann for Congress, and Joe Droogsma, in his official capacity as treasurer, violated 2 U.S.C. § 441b by making or receiving prohibited corporate contributions related to the mailing list.

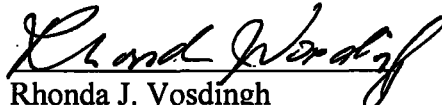
#### IV. RECOMMENDATIONS

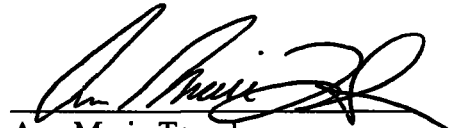
1. Find no reason to believe that EdWatch, Inc., Renee T. Doyle, Bachmann for Congress and Joe Droogsma, in his official capacity as treasurer, violated 2 U.S.C. § 441b by making or receiving prohibited corporate contributions related to the endorsement and mailing list;
2. Approve the appropriate letters;
3. Close the file.


Lawrence H. Norton  
General Counsel

10/26/06  
Date

BY:

  
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